

SENATE BILL No. 114

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-10-1-2.

Synopsis: Counsel for indigent inmates in civil actions. Requires the department of correction to pay the attorney's fees of an indigent inmate in a civil action.

Effective: July 1, 2004.

Bowser

January 6, 2004, read first time and referred to Committee on Judiciary.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 114

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-10-1-2, AS AMENDED BY P.L.125-2002,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 2. (a) This section may not be construed to
4 prohibit a court from participating in a pro bono legal services program
5 or other program that provides legal services to litigants:

6 (1) without charge; or

7 (2) at a reduced fee.

8 (b) If the court is satisfied that a person who makes an application
9 described in section 1 of this chapter does not have sufficient means to
10 prosecute or defend the action, the court:

11 (1) shall admit the applicant to prosecute or defend as an indigent
12 person; and

13 (2) may, under exceptional circumstances, assign an attorney to
14 defend or prosecute the cause.

15 (c) The factors that a court may consider under subsection (b)(2)
16 include the following:

17 (1) The likelihood of the applicant prevailing on the merits of the

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applicant's claim or defense.

(2) The applicant's ability to investigate and present the applicant's claims or defenses without an attorney, given the type and complexity of the facts and legal issues in the action.

(d) The court shall deny an application made under section 1 of this chapter if the court determines any of the following:

(1) The applicant failed to make a diligent effort to obtain an attorney before filing the application.

(2) The applicant is unlikely to prevail on the applicant's claim or defense.

(e) All officers required to prosecute or defend the action shall do their duty in the case without taking any fee or reward from the indigent person.

(f) **Except as provided in subsection (g),** the reasonable attorney's fees and expenses of an attorney appointed to represent an applicant under section 1 of this chapter shall be paid from the money appropriated to the court:

(1) appointing the attorney, if the action was not transferred to another county; or

(2) from which the action was transferred, if the action was transferred to another county.

(g) The department of correction shall pay the reasonable attorney's fees and expenses of an attorney appointed to represent an applicant under section 1 of this chapter if the applicant is an inmate committed to:

(1) the department of correction; or

(2) a county jail by the department of correction;

at the time the application described in section 1 of this chapter is filed with the court.

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